



## **Preliminary Audit Report of the Audit Division on McCain-Palin 2008 Inc. and McCain-Palin Compliance Fund, Inc.**

March 24, 2008 - December 31, 2008

---

### **Why the Audit Was Done**

Federal law requires the Commission to audit every political committee established by a Presidential candidate who receives general funds for the general campaign.<sup>1</sup> The audit determines whether the candidate was entitled to all of the general funds received, whether the campaign used the general funds in accordance with the law, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

### **Future Action**

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### **About the General Committee**

McCain-Palin 2008 Inc. (General Committee) is the principal campaign committee for Senator John S. McCain, the Republican Party's nominee for the office of President of the United States. The General Committee is currently headquartered in Washington, DC. For more information, see chart on Campaign Organization, p. 2.

### **Financial Activity of the General Committee**

• <b>Receipts</b>	
○ Federal Funds Received	\$ 84,103,800
○ Offsets to Operating Expenditures	9,318,570
○ Loans Received	17,076,880
○ Other Receipts	1,154,733
○ <b>Total Receipts</b>	<b>\$ 111,653,983</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 92,083,836
○ Loans Repayment	17,076,880
○ Other Disbursements	1,491,107
○ <b>Total Disbursements</b>	<b>\$ 110,651,823</b>

### **Finding and Recommendation for the General Committee (p. 5)**

- Campaign Travel Billing for Press

---

<sup>1</sup> 26 U.S.C. §9007(a).

## **About the Compliance Fund**

The McCain-Palin Compliance Fund, Inc. (Compliance Fund) was established pursuant to 11 CFR §9003.3(a)(1)(i). The Compliance Fund accepts contributions to be used solely for legal and accounting services to ensure compliance with the Federal Election Campaign Act (Act). These contributions include the Compliance Fund's share of contributions from affiliated joint fundraising committees. The Compliance Fund is currently headquartered in Washington, DC. An overview of financial activity for the Compliance Fund is presented below.

## **Financial Activity of the Compliance Fund**

• <b>Receipts</b>	
○ Contributions	\$ 9,679,490
○ From Other Authorized Committees	25,046,453
○ Offsets to Operating Expenditures	1,131,139
○ Other Receipts	12,471,782
○ <b>Total Receipts</b>	<b>\$48,328,864</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$11,675,642
○ All Other Disbursements	13,112,237
○ <b>Total Disbursements</b>	<b>\$24,787,879</b>

## **Finding and Recommendation for the Compliance Fund (p. 5)**

- Failure to File 48-Hour Notices

### **About Joint Fundraising Committees**

This audit included seven joint fundraising committees. Each of the joint fundraising committees is headquartered in Alexandria, Virginia and was an authorized committee of the candidates John McCain and Sarah Palin. The combined financial activity for these joint fundraising committees is presented below and the financial activity for each of these committees is presented on page 4.

### **Financial Activity of the Joint Fundraising Committees**

•	<b>Receipts</b>	
○	Contributions	\$ 207,620,125
○	From Other Authorized Committees	812,325
○	Offsets to Operating Expenditures	159,926
○	<b>Total Receipts</b>	<b>\$208,592,376</b>
•	<b>Disbursements</b>	
○	Operating Expenditures	\$30,374,903
○	All Other Disbursements	167,116,292
○	<b>Total Disbursements</b>	<b>\$197,491,195</b>

### **Finding and Recommendation for the Joint Fundraising Committees (p. 5)**

Based upon the limited examination of the reports and statements filed, and the records presented by seven joint fundraising committees, the Audit staff did not discover any material non-compliance.

**Preliminary Audit Report of the  
Audit Division on  
McCain-Palin 2008 Inc. and  
McCain-Palin Compliance Fund,  
Inc.**

---

March 24, 2008 – December 31, 2008



# Table of Contents

	<b>Page</b>
<b>Part I. Background</b>	
Authority for Audit	1
Scope of Audit	1
Inventory of Campaign Records	1
<b>Part II. Overview of Campaign</b>	
Campaign Organization	2
Overview of Financial Activity	3
<b>Part III. Summaries</b>	
Finding and Recommendation – General Committee	5
Finding and Recommendation – Compliance Fund	5
Finding and Recommendation – Joint Fundraising Committees	5
<b>Part IV. Finding and Recommendation for the General Committee</b>	
Campaign Travel Billing for Press	6
<b>Part V. Finding and Recommendation for the Compliance Fund</b>	
Failure to File 48-Hour Notices	14
<b>Part VI. Finding and Recommendation for the Joint Fundraising Committees</b>	
Based upon the limited examination of the reports and statements filed and the records presented, the Audit staff discovered no material non-compliance.	16
<b>Part VII. Attachment</b>	
Statement of Net Outstanding Qualified Campaign Expenses	17

# Part I

## Background

### Authority for Audit

This report is based on audits of McCain-Palin 2008 Inc. (General Committee), McCain-Palin Compliance Fund, Inc. (Compliance Fund), and seven joint fundraising committees affiliated with the Compliance Fund, undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9007(a) of Title 26 of the United States Code. That section states that "after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President." This includes joint fundraising committees authorized by the candidates. Also, Section 9009(b) of Title 26 of the United States Code states, in part, that the Commission may conduct other examinations and audits as it deems necessary.

### Scope of Audit

The audits of the General Committee and Compliance Fund examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The receipt of transfers from other authorized committees.
4. The disclosure of contributions and transfers received.
5. The disclosure of disbursements, debts and obligations.
6. The recordkeeping process and completeness of records.
7. The consistency between reported figures and bank records.
8. The accuracy of the Statement of Net Outstanding Qualified Campaign Expenses.
9. The campaigns' compliance with spending limitations.
10. Other campaign operations necessary to the review.

The audits of the seven joint fundraising committees affiliated with the Compliance Fund examined:

1. The receipt of excessive contributions and loans pertaining to the Compliance Fund.
2. The proper allocation of contributions among joint fundraising participants.
3. The proper allocation of expenses and net amounts transferred to the Compliance Fund.
4. The consistency between reported figures and bank records.

### Inventory of Records

The Audit staff routinely conducts an inventory of campaign records before it begins the audit fieldwork. The records for each of the audited committees were complete and the fieldwork began immediately.

## Part II

### Overview of Campaign

#### Campaign Organization

	General Committee	Compliance Fund
<b>Important Dates</b>		
• Date of Registration	08/12/08	02/25/08
• Audit Coverage Dates	09/01/08 thru 12/31/08	03/24/08 thru 12/31/08
<b>Headquarters</b>	Washington, DC	Washington, DC
<b>Bank Information</b>		
• Bank Depositories	3	4
• Bank Accounts	8 Bank Accounts	8 Bank Accounts
<b>Treasurer</b>	Salvatore A. Pupura (08/12/08 – 08/18/08); Joseph Schmuckler (08/19/08 – Present)	Salvatore A. Pupura (02/25/08 – 03/20/08); Joseph Schmuckler (03/21/08 – Present)

#### Joint Fundraising Committees

The audit included seven joint fundraising committees affiliated with the Compliance Fund. Four of the joint fundraising committees registered with the Federal Election Commission in April 2008 and three registered in August 2008. These committees are headquartered in Alexandria, Virginia and Lisa Lisker is the Treasurer for each committee. Six of the joint fundraising committees each maintained a single bank account, and the seventh joint fundraising committee maintained two bank accounts.

## Overview of Financial Activity

(Audited Amounts)

	General Committee	Compliance Fund
<b>Opening Cash on Hand</b>	\$0	\$0
<b>Receipts</b>		
• Contributions		\$ 9,679,490
• Federal Funds Received	\$84,103,800	
• From Other Authorized Committees		25,046,453
• Offsets to Operating Expenditures	9,318,570	1,131,139
• Loan Received	17,076,880	
• Other Receipts	1,154,733	12,471,782
<b>Total Receipts</b>	<b>\$111,653,983</b>	<b>\$48,328,864</b>
<b>Disbursements</b>		
• Operating Expenditures	\$92,083,836	\$11,675,642
• Transfers to Other Authorized Committees		222,502
• Loan Repayment	17,076,880	
• Refunds to Contributors		551,599
• Other Disbursements	1,491,107	12,338,136
<b>Total Disbursements</b>	<b>\$110,651,823</b>	<b>\$24,787,879</b>
<b>Closing Cash Balance @12/31/2008</b>	<b>\$1,002,160</b>	<b>\$23,540,985</b>



## Overview of Financial Activity

(Audited Amounts)

<u>Joint Fundraising Committees</u>	McCain Victory 2008	McCain Palin Victory 2008	McCain Victory Ohio	McCain Palin Victory Ohio	McCain Victory California	McCain Palin Victory California	McCain Victory Florida
<b>Opening Cash on Hand</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Receipts</b>							
• Individual Contributions	\$76,290,438	\$100,038,158	\$4,462,440	\$1,790,913	\$15,194,747	\$5,175,926	\$3,128,210
• Political Committee Contributions	\$603,884	\$529,183	\$82,850	\$42,000	\$200,795	\$49,581	\$31,000
• Transfers from Other Authorized Committees	\$366,165	\$301,310	\$4,300	\$0	\$77,350	\$40,800	\$22,400
• Offsets	\$14,402	\$102,077	\$100	\$0	\$41,983	\$270	\$1,094
<b>Total Receipts</b>	<b>\$77,274,889</b>	<b>\$100,970,729</b>	<b>\$4,549,690</b>	<b>\$1,832,913</b>	<b>\$15,514,875</b>	<b>\$5,266,576</b>	<b>\$3,182,704</b>
<b>Disbursements</b>							
• Operating Expenditures	\$7,400,078	\$18,983,527	\$499,768	\$283,642	\$1,705,448	\$895,640	\$606,800
• Transfers to Other Authorized Committees	\$66,642,154	\$74,097,252	\$3,597,748	\$1,418,627	\$13,154,796	\$3,871,179	\$2,326,750
• Refunds to Contributors	\$403,974	\$611,376	\$91,285	\$21,200	\$350,951	\$379,600	\$120,900
• Other Disbursements	\$28,500	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Disbursements</b>	<b>\$74,474,706</b>	<b>\$93,692,155</b>	<b>\$4,188,801</b>	<b>\$1,723,469</b>	<b>\$15,211,195</b>	<b>\$5,146,419</b>	<b>\$3,054,450</b>
<b>Closing Cash Balance @12/31/2008</b>	<b>\$2,800,183</b>	<b>\$7,278,574</b>	<b>\$360,889</b>	<b>\$109,444</b>	<b>\$303,680</b>	<b>\$120,157</b>	<b>\$128,255</b>

## **Part III**

### **Summaries**

#### **General Committee**

##### **Campaign Travel Billing for Press**

The General Committee apparently received reimbursement from the Press for campaign travel that was above the maximum amount billable to the Press. The Commission's regulations provide that a 10 percent markup on the actual cost of transportation and services may be billed to the Press. The General Committee believes the excess reimbursement from the Press for travel is a misallocation of billing proceeds, requiring the General Committee to pay John McCain 2008, Inc. (the Primary Committee) for the overage collected. The Audit staff recommends the General Committee refund \$344,892 to the Press for reimbursements received in excess of the maximum amount billable. (For more detail, see p. 6.)

#### **Compliance Fund**

##### **Failure to File 48-Hour Notices**

The Compliance Fund failed to file 48-hour notices for 169 contributions totaling \$240,700 received prior to the general election. The Audit staff recommends that the Compliance Fund provide evidence that 48-hour notices were timely filed or submit any written comments it considers relevant. (For more detail, see p. 14.)

#### **Joint Fundraising Committees**

Based upon the limited examination of the reports and statements filed, and the records presented by seven joint fundraising committees, the Audit staff discovered no material non-compliance. (For more detail, see p. 16.)

## Part IV

# Finding and Recommendation for the General Committee

### Campaign Travel Billing for Press

#### Summary

The General Committee apparently received reimbursement from the Press for campaign travel that was above the maximum amount billable to the Press. The Commission's regulations provide that a 10 percent markup on the actual cost of transportation and services may be billed to the Press. The General Committee believes the excess reimbursement from the Press for travel is a misallocation of billing proceeds, requiring the General Committee to pay John McCain 2008, Inc. (the Primary Committee) for the overage collected. The Audit staff recommends the General Committee refund \$344,892 to the Press for reimbursements received in excess of the maximum amount billable.

#### Legal Standard

**A. Expenditures for Transportation and Services Made Available to Media Personnel and Secret Service.** Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service and computers) provided to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1). 11 CFR §9004.6.

**B. Billing Media Personnel for Transportation and Services.** The committee shall provide each media representative, no later than 60 days from the campaign travel or event, an itemized bill that specifies the amounts charged for air and ground transportation for each segment of the trip, meals and other billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. 11 CFR §9004.6(b)(3).

**C. Reimbursement Limits for Transportation and Services of Media Personnel.** The amount of reimbursement sought from media personnel shall not exceed 110 percent of the media representative pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of transportation and services made available. Any reimbursement received in excess of this amount shall be returned to the media representative. 11 CFR §9004.6(b) and (d)(1).

**D. Pro Rata Share Definition.** A media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom transportation and services were made available (to include committee staff, media personnel, Secret Service staff). 11 CFR §9004.6(b)(2).

**E. Administrative Costs for Transportation and Services of Media Personnel.** The committee may deduct from the amount of expenditures subject to the overall limitation the reimbursements paid by media representatives for transportation and services, up to the actual cost of the transportation and services provided to the media representatives. The committee may deduct an additional amount of the reimbursements received from media representatives, representing the incurred administrative costs of 3 percent. The committee may deduct an amount in excess of 3 percent representing the administrative costs actually incurred by the committee in providing services to the media, provided that the committee is able to document the total amount of administrative costs actually incurred.

For the purposes of the above paragraph, administrative costs include all costs incurred by the committee in making travel arrangements and seeking reimbursement, whether these services are performed by committee staff or independent contractors. 11 CFR §9004.6(c).

**F. Attribution of Travel Costs.** Expenditures for campaign-related transportation, food and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense. Travel to and from the conventions shall be attributed to the primary election. Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense, even if the travel occurs before the candidate's nomination. 11 CFR §9034.4(e)(7).

**G. Travel Support Documentation.** For each trip, an itinerary shall be prepared and made available by the committee for Commission inspection. The itinerary shall show the time of arrival and departure and the type of events held.

For trips by government conveyance or by charter, a list of all passengers, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection. When required to be created, a copy of the government's or charter company's official manifest shall also be maintained and made available by the committee. 11 CFR §9004.7(b)(3) and (4).

**H. Assets Purchased from the Primary Election Committee.** If capital assets are obtained from the candidate's primary election committee, the purchase price shall be considered to be 60 percent of the original cost of such assets to the candidate's primary election committee. 11 CFR §9004.9(d)(1)(ii).

## **Facts and Analysis**

### **A. Facts**

In 2008, the Press covering the campaign of the Presidential candidate (John McCain) and the Vice Presidential candidate (Sarah Palin) travelled predominately on two aircraft chartered by the campaign. The aircraft for the Presidential candidate was the same aircraft used by John McCain 2008, Inc. (the Primary Committee) and was chartered through Swift Air, LLC (Swift Air). The aircraft for the Vice Presidential candidate was chartered through JetBlue Airways Corporation shortly before the Republican National

Convention. The Press also occasionally travelled on aircraft chartered by the General Committee through CSI Aviation Services (CSI) and via ground transportation throughout the campaign.

As cited above, the amount of reimbursement sought from media personnel shall not exceed 110 percent of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of transportation and services made available. Any reimbursement received in excess of this amount shall be returned to the media representative. 11 CFR §9004.6(b) and (d)(1).

According to the General Committee, it did not receive Press travel reimbursement above the 110 percent allowed by the regulations. The General Committee calculated total transportation costs for the Press to be \$4,503,658. The total billing to the Press equals 106 percent of the cost calculated by the General Committee. The General Committee actually received \$4,476,728 from the Press as reimbursement for travel.

During fieldwork, the Audit staff calculated that the General Committee received Press travel reimbursement in excess of the 110 percent allowed by the regulations. The Audit staff calculated the total pro rata transportation cost for the Press to be \$3,756,215 and a maximum amount billable to the Press (110 percent of cost) of \$4,131,836.<sup>2</sup> Based on the Audit staff's calculation of transportation costs, the General Committee is required to refund to the Press \$344,892 (\$4,476,728 - \$4,131,836).

The main difference between the General Committee's figure and the Audit staff's figure is the calculation for total transportation costs. The General Committee disagreed with the Audit staff's cost calculation methods with respect to charter flights associated with the aircraft used by the Presidential candidate. The General Committee also did not agree with the Audit staff's initial application of aircraft reconfiguration costs.

The Audit staff calculated transportation costs based on actual hours used only by the General Committee during the general campaign. The General Committee, in contrast, calculated transportation costs based on the life of the charter contract, which covered both the primary and general campaign periods.

#### ***Applying Cost on Aircraft for Presidential Candidate***

The Primary Committee and the General Committee chartered a Boeing 737-400 from Swift Air for use by the presidential candidate. The Swift Air contract covered the period from June 30, 2008 through November 15, 2008. The contract stipulated payments totaling \$6,384,000 to be paid in 19 weekly installments of \$336,000. The contract covered nine weeks for the Primary Committee and ten weeks for the General Committee. The contract also required the General Committee and Primary Committee to pay costs for fuel, catering, passenger taxes, and ground handling fees. There was also an aircraft reconfiguration cost of \$650,000 that was paid initially by the Primary

<sup>2</sup> The General Committee billed at 106 percent, but was able to document administrative costs of 110 percent for all modes of transportation. In determining the amount billable to the Press, the Audit staff credited the General Committee for any under billing of the Press associated with any one aircraft or mode of transportation. In other words, any under billing of the Press for travel on the aircraft for the Vice Presidential candidate, CSI chartered aircraft, and ground transportation was applied to any overbilling of the Press that may have occurred for travel on the Presidential aircraft.

Committee. The General Committee correctly reimbursed the Primary Committee \$390,000 (\$650,000 less 49 percent depreciation) for these aircraft reconfiguration costs.

The contract allowed 22.4 flight hours per week, or a total of 425.6 flight hours for the life of the contract. If the full flight hours per week were not flown, the hours rolled over to subsequent week(s). If the contracted 22.4 flight hours per week were exceeded and no accumulated unused hours were available, there was a charge of \$15,000 per additional hour. Neither the Primary nor General Committee ever exceeded the 22.4 flight hours in a week. The General Committee used 140.3 flight hours and the Primary Committee used 111.8 flight hours during the contract.

The General Committee made its first weekly installment payment of \$336,000 on August 29, 2008, and made total payments of \$4,047,402 to Swift Air. This amount included charges for fuel, catering, passenger taxes, and ground handling fees.

For the first week of the campaign, the General Committee used the total cost of the contract (primary and general) and divided it by the remaining number of hours available under the contract, including unused hours paid for by the Primary Committee. Later weeks were calculated using the amount yet to be paid on the contract and dividing it by the estimated flight hours that would be used in the future, based on weekly averages. The calculation included reconfiguration costs. This method caused a fluctuation of the hourly charter rate calculated from as low as \$11,569 to as high as \$39,715. Using this rate, the segment cost was calculated and divided by the number of passengers.

The Audit staff calculated the charter rate per flight hour for Swift Air by taking the contract weekly installment (\$336,000) and dividing that by the actual weekly hours flown. The cost for fuel, catering, passenger taxes, ground handling, and certain reconfiguration costs were then added to determine the total segment cost. The cost per passenger was then calculated by dividing the total segment cost by the total number of passengers on the segment.

#### ***Applying Reconfiguration Costs***

The Audit staff and the General Committee did not initially agree on the amount of aircraft reconfiguration costs billable to the Press. Historically, the Commission has allowed the Press to be billed only for the aircraft reconfiguration costs that could be reasonably considered as having benefited the Press. The General Committee believes all costs for reconfiguring an aircraft at the beginning and at the end of the campaign should be considered when calculating the billable amount for the Press. The General Committee also stated that part of the aircraft reconfiguration cost was to bring the aircraft into compliance with FAA safety standards that ultimately benefited the safety of all passengers including the Press.

#### **B. Preliminary Audit Report & Audit Division Recommendation**

The issue of press travel reimbursement was presented at the exit conference. In response, the General Committee submitted the following points for the Commission's consideration.

### ***Cost Calculation***

The General Committee made a comparison between the Swift Air contract, which spanned both the primary and general election periods, and similar aircraft contracts that were analyzed during previous presidential audits: Dole-Kemp in 1996, Bush-Cheney in 2000, and Kerry-Edwards in 2004. The General Committee specifically referenced the Audit staff's calculation of the hourly rate for each aircraft from the 1996 Dole-Kemp audit, which accumulated all operating costs and divided that total by the actual number of hours flown by each aircraft. By applying the same calculation to the entire amount of the Swift Air contract (\$6,384,000 divided by 252.1 hours flown), the General Committee contends its cost calculations used for billing the Press were accurate.

The Audit staff agrees that when using the *total* Swift Air contract amount for both the primary and general election periods, as well as the full aircraft reconfiguration costs, the General Committee did not receive travel reimbursement from the Press that exceeded the maximum allowed by the regulations. However, as in Dole-Kemp only those costs attributable to the General Committee should be used in determining the travel cost the General Committee may bill to the Press. This conclusion is consistent with travel cost calculations in past presidential audits and supported by 11 CFR §9034.4(e)(7), which states, in part, that expenditures for campaign-related transportation shall be attributed according to when the travel occurs. As in Dole-Kemp, the Audit staff used only the general election operating cost (\$4,047,402) and the actual weekly hours flown by the General Committee when calculating the billable cost to the Press. This is a more appropriate method when calculating costs and billing for campaign travel during the general election period.

The General Committee provided a spreadsheet that spanned the primary and general election periods and relied on adjusting the per hour billing rates on a segment-by-segment basis due to using fewer flight hours than available in the Swift Air contract. The General Committee made the spreadsheet available to demonstrate that the Primary and General Committees' billing allocation was based on total costs (\$6,354,859) that were lower than the contract amount (\$6,384,000). The General Committee contends that no overbilling of the Press could have occurred since the difference (\$29,141) was never billed to the Press by the Primary committee during week eight. However, it appears that the General Committee billed this difference to the Press<sup>3</sup>. Therefore, the General Committee included the total contract amount in calculating the billing allocation.

The Audit staff used the weekly \$336,000 installment divided by the actual weekly hours flown during the general election period for billing calculations (plus the fuel, catering, taxes, and ground handling fees). The General Committee explained that the Audit staff's calculations had the benefit of hindsight because during the fast pace of the election campaign the actual flying hours were unknown at the time of billing. Therefore, estimates of pro rata share had to be used in order to be in compliance of the regulations to bill media representatives within 60 days of travel. The General

<sup>3</sup> During the second week of the general campaign, the General Committee calculated Press billing by using the total cost of the contract (\$6,384,000) and subtracting the amount of the contract already billed (\$2,140,752) to arrive at the remaining balance of the contract. The helicopter cost (\$29,141) was included in the \$2,140,752 already billed. The remaining balance of the contract was then divided by the average estimated flight hours remaining on the contract to determine the adjusted charter rate for the week.

Committee believes the Audit staff's methodology would be in conflict with 11 CFR §9004.6(b)(3), which says, in part, that media representatives should be given a bill that specifies amounts charged for air and ground for each segment.

The Audit staff's methodology does not conflict with 11 C.F.R. §9004.6(b)(3), given that the actual flight hours are known soon after flights occur and thereby falling within the required 60 days to provide the Press an itemized bill that specifies the amounts charged for air transportation for each segment of the trip. It appears the General Committee invoiced the Press on average 12 days after completion of each travel week, allowing time to use the actual flight hours for the week. Other billable travel costs known at the time of billing also could have been added to determine the cost per passenger. This method would incorporate adjusting for weekly flight hours.

The General Committee also referenced the 2000 Bush-Cheney audit and explained that it used the same billing methodology and personnel in that audit, which did not include an adverse audit finding or any informal advice from the Audit staff suggesting a correction to the accounting methods was necessary. The Audit staff acknowledges that the same billing methodology was used in 2000 Bush-Cheney however, the amount of the overbilling of the Press was not material. Furthermore, there is no indication that cost associated with the Bush Primary Committee was included in the calculation of travel cost of the 2000 Bush-Cheney General Committee.

#### ***Generally Accepted Accounting Principles***

The General Committee explained several accounting principles and standards under Generally Accepted Accounting Principles (GAAP) to support its methodology for billing the Press. The General Committee believes that the Audit staff did not apply the appropriate accounting basis in its analysis. Specifically, the General Committee believes the Audit staff incorrectly applied a cash-basis of accounting instead of an accrual-basis in its analysis of Press billing. Under cash-basis accounting, revenue is recorded when cash is received and an expense is recorded when cash is paid. In accrual-basis accounting, revenue is recognized when it is earned (or when services are performed) and expenses recognized when incurred.<sup>4</sup> The General Committee explains that under accrual-basis accounting, the objective is to ensure that events that change an entity's financial statements are recorded in the periods in which the events occur, rather than only in the periods the entity receives or pays cash. The General Committee also states the matching principle under GAAP dictates that expenses are recognized when the revenue is recognized, and therefore the entire cost of the contract should be used when calculating billing for travel.

The Audit staff agrees that the matching principle dictates that expenses are recognized when the revenue is recognized. In turn, the revenue recognition principle recognizes revenue in the *period* in which it is earned. Since the *period* and activity audited was the general election period, the Audit staff correctly applied the \$4,047,402 cost for the general election portion of the Swift Air contract and related expenses.

The issue is not whether the cash or accrual-basis of accounting is applied to the transportation costs and revenue generated from the billing of the Press for travel; nor is

<sup>4</sup> "Accounting Principles 7<sup>th</sup> Edition", Jerry J. Weygandt PhD, CPA, Donald E. Kieso PhD, CPA, Paul D. Kimmel PhD, CPA, page 90



there a question of the matching principle under GAAP. At issue is whether the activity of a separate reporting and corporate entity (the Primary Committee) should be recognized by the General Committee and by this audit. An underlying assumption to GAAP is that every entity is separate and, therefore, the revenues and expenses of each entity should be recognized as such. As previously noted, recognizing the activity of the two entities separately is further supported by 11 CFR §9034.4(e)(7), which states in part that expenditures for campaign-related transportation shall be attributed according to when the travel occurs. Therefore, the General Committee should recognize only those transportation costs from September 1, 2008 through November 4, 2008 in the calculation for billing the Press.

### ***Reconfiguration***

The General Committee believes that aircraft reconfiguration costs are a part of placing the asset in service and reconfiguration costs were included in the value of the asset when it was purchased from the Primary Committee. Therefore, the General Committee contends that all reconfiguration costs could be billed to the Press pro rata since the Press used the asset.

In response to the Exit Conference and after discussions with the Audit staff, the General Committee stated that all reconfiguration costs incurred, with the exception of decals and any item that benefited only campaign staff, such as dividing curtain expenses, should be included in the billable amount. After considering the General Committee's response, the Audit staff revised its calculation of aircraft reconfiguration costs billable to the Press. The Audit staff did not include costs for painting and applying logos totaling \$161,386 and the cost for a divider curtain totaling \$1,167 in the calculation for billable reconfiguration costs since the General Committee indicated that these items benefited only the campaign. As a result, the Audit staff calculated \$487,447 (\$650,000 – \$161,386 – \$1,167) in reconfiguration costs billable for all travelers for both the primary and general periods. After taking 60 percent of the accepted reconfiguration cost because the aircraft was purchased from the Primary Committee, the Audit staff calculated \$292,468 ( $\$487,447 \times 60\%$ ) of aircraft reconfiguration costs as billable during the general period. The Audit staff divided this amount by the total 140.3 flight hours flown by the General Committee to determine the amount of aircraft reconfiguration costs attributed to each segment.

### ***Other Considerations***

The General Committee stated that the Audit staff and the Commission have allowed for transfers and repayments between primary and general election presidential committees with respect to other types of vendors. The General Committee believes that any excess funds from the Press for travel are no different than deposits related to other vendors such as those for telephone contracts, media placement refunds, or lease agreements, whereby repayments sometimes are necessary to ensure a primary committee does not subsidize the general committee.

The General Committee also contends it would not be reasonable to force campaigns to renegotiate and redraft every legal contract that exists to separate Primary and General activity. To refund the Press would involve more than 700 separate billing transactions and it would "go against many of the internal ethics policies of the various news

organizations...who are not allowed to receive passage at discounted rates on campaign transportation so as to not unduly influence their coverage of the candidates."

The Audit staff acknowledges the administrative burden that may be involved with refunding the Press. Historically, the Commission has allowed refunds to the Press to be made on a pro rata basis, such as in the 1996 Dole-Kemp audit, rather than recalculating each billing to the Press. The alternative suggestion, refunding the Primary Committee, would be considered a non-qualified campaign expense subject to repayment. The regulations state that a general election committee cannot incur primary-related expenses because they are not in furtherance of the general election. 11 C.F.R. §9002.11(a).

The General Committee received reimbursements from the Press for campaign travel that were above the maximum amount billable to the Press. The Primary Committee appears to have billed an amount that was less than its cost. The Primary and General Committee each paid its share of the contract and billed the Press and Secret Service accordingly. Although the regulation limits how much can be billed, there is no requirement that any billing be made. Thus, the travel could be provided at no cost.

The General Committee is correct that there are transactions between the Primary and General Committees in many Presidential campaigns in which either the primary or general election is publicly funded. Assets, ranging from office equipment to service deposits to, as in this case, aircraft configuration, often are purchased. In each case, value is transferred between the two committees. For example, if the General Committee purchases security deposits, it gives cash for the right to continue the service and recover the deposit after the campaign. No such exchange is involved in the proposed transfer to the Primary Committee in this case.

The General Committee does not dispute that it received more reimbursements from the Press during the general election period, but the General Committee believes a more appropriate term is misallocation of Press travel reimbursement received between the General Committee and the Primary Committee. The General Committee's methodology may accurately reflect the comparative actual use of the aircraft between the Primary (111.8 flight hours) and General Committees (140.3 flight hours), but it does not reflect the comparative actual costs paid by each committee. The General Committee did not exceed the overall expenditure limitation, even with the excessive Press reimbursements. However, the purpose is to match the cost of the campaign to the proper election and spending limit. For these reasons and those noted above, the General Committee received reimbursements totaling \$344,892 from the Press that were above the maximum amount billable under the regulations.

The Audit staff recommends that, within 60 calendar days of service of this report, the General Committee demonstrate it did not receive reimbursements from the Press for campaign travel that were above the maximum amount billable to the Press. Absent such evidence, the General Committee should return, on a pro rata basis, \$344,892 to Press representatives and provide documentation to support the refunds.

## **Part V**

# **Finding and Recommendation for the Compliance Fund**

### **Failure to File 48-Hour Notices**

#### **Summary**

The Compliance Fund failed to file 48-hour notices for 169 contributions totaling \$240,700 received prior to the general election. The Audit staff recommends that the Compliance Fund provide evidence that 48-hour notices were timely filed or submit any written comments it considers relevant.

#### **Legal Standard**

**48-Hour Notification of Contributions.** An authorized committee of a candidate must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

#### **Facts and Analysis**

##### **A. Facts**

The General election was held on November 4, 2008. Contributions of \$1,000 or more received by the Compliance Fund between October 16, 2008 and November 1, 2008 required the filing of 48-hour notices. (FEC Form 6 – 48-Hour Notice of Contributions/Loans Received). The Audit staff isolated 589 contributions, totaling \$871,260, which required the filing of these 48-hour notices. A review of these records identified 169 contributions, totaling \$240,700, for which the Compliance Fund failed to file the 48-hour notices.

##### **B. Preliminary Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with Compliance Fund representatives at the Exit Conference and provided a schedule of the contributions requiring 48-hour notice filings. In response, Compliance Fund representatives stated the matter had been previously addressed in a letter to the Reports Analysis Division and reiterated that “48-Hour Notices were not required for many of the identified contributions, as they were merely redesignations or reattributions that took place during the 48-Hour Notice reporting period.” The Compliance Fund representatives also stated that “the Compliance Fund’s normal practice of filing a 48-Hour Notice was not followed for a remaining group of contributions, due to data-management errors made by its outside vendor. To elaborate, the Compliance Fund’s outside data-management vendor ‘tagged’ this group of contributions with an incorrect date in its database and consequently failed to locate the group in a subsequent, computerized search for contributions requiring a 48-Hour Notice. The Compliance Fund has now taken measures with this outside vendor to ensure that

this unintentional oversight is corrected, and Compliance Fund staff believes that this was a one-time occurrence.”

Additionally, Compliance Fund representatives emphasized that “48-Hour Notices are intended to bring to light any last-minute contributions that a candidate might deploy for campaign-related activities, such as advertising and get-out-the-vote efforts, during an election’s final days. Donations to the Compliance Fund, however, may not be used for any candidate’s election and may only support legal and accounting services to ensure compliance with Federal law. It should also be noted that the Compliance Fund today maintains a balance of over \$20 million, meaning that these funds received shortly before the 2008 general election still have not been spent for any purpose. The Compliance Fund was therefore not in material violation of the 48-hour notice requirement when its reliance on an outside vendor caused it to delay disclosure of donations that would only fund lawyers’ and accountants’ legal compliance activities. For these same reasons, the Compliance Fund should not be fined for this vendor failure even if the Commission somehow finds that a technical infringement of the 48-hour notice requirement occurred.”

The Audit staff recommends that, within 60 calendar days of service of this report, the Compliance Fund provide:

- documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- documentation establishing the contributions were not subject to 48-hour notification; and/or,
- any further written comments it considers relevant.

## **Part VI**

### **Finding and Recommendation for the Joint Fundraising Committees**

Based upon the limited examination of the reports and statements filed, and the records presented by seven joint fundraising committees, the Audit staff discovered no material non-compliance.

## Part VII

### Attachment

**McCain-Palin 2008 Inc.**  
**Net Outstanding Qualified Campaign Expenses**  
**As of December 4, 2008**  
**As Determined on June 30, 2011**

**Assets**

Cash in Bank			\$3,693,508	
Accounts Receivable:				
Due from the Compliance Fund	\$2,661,115	(a)		
Due from the Primary Committee	\$339,056			
Due from other Vendors	<u>\$4,234,755</u>	(b)		
			<u>\$7,234,926</u>	
<b>TOTAL ASSETS</b>				<b>\$10,928,434</b>

**Obligations:**

Accounts Payable:				
For Qualified Campaign Expenses			\$8,448,103	
Due to the Compliance Fund			\$100,107	
Due to the Primary Committee			\$167,828	
Payment to Press for Campaign Travel			\$344,892	(c)
Amount Due U.S. Treasury:				
Disgorgement of Interest Earned			\$58,319	(d)
Disgorgement of Stale-Dated Checks			\$2,882	(e)
Winding Down Costs:				
Actual: December 5, 2008 to June 30, 2011			<u>\$1,806,303</u>	(f)
<b>TOTAL OBLIGATIONS</b>				<b>\$10,928,434</b>
<b>NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES (DEFICIT)</b>				<b><u>(\$0)</u></b>

- (a) This amount represents repayments for expenditures paid by General, \$87,217 for Secret Service shortfall for campaign travel, \$76,841 for transfers, and \$2,399,908 for 5 percent allocable portion of media costs. A receivable for \$97,149 is due for compliance-related winding down costs.
- (b) This amount represents Press and Secret Service receipts, media refunds through June 30, 2011, interest earned, capital assets sold, and capital assets in-house to be sold.
- (c) This amount represents payment due to Press as discussed in the Campaign Travel Billing for Press finding on page 6.
- (d) This amount represents disgorgement made on Jan. 2, 2009 for interest.
- (e) This amount represents disgorgement made on Jan. 2, 2010 for stale-dated checks.
- (f) The General Committee has not exceeded the winding down cost limitation at 11 CFR §9004.11(b).